

## EXECUTIVE SUMMARY

### Introduction

In Mid States Coalition for Progress v. STB, 345 F.3d 520 (8<sup>th</sup> Cir. 2003) (Mid States), the court vacated and partially remanded the Board's decision in this rail construction case (see Mid States attached at Appendix A). This Draft Supplemental Environmental Impact Statement (Draft SEIS) addresses the four environmental issues remanded by the 8<sup>th</sup> Circuit Court of Appeals (court). The Draft SEIS was prepared by the Surface Transportation Board's (Board or STB) Section of Environmental Analysis (SEA), in conjunction with five federal cooperating agencies (the United States Department of Agriculture's Forest Service, the United States Department of Interior's Bureaus of Land Management and Reclamation, the United States Army Corps of Engineers, and the Coast Guard).

### Background

In February 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) sought authority from the Surface Transportation Board (Board) to construct and operate an approximately 280-mile rail line extension to reach certain coal mines in Wyoming's Powder River Basin (PRB). The proposed line would allow DM&E to become the third rail carrier to transport low-sulfur coal from the PRB and in so doing generate the funds needed to completely upgrade DM&E's existing 598-mile rail main line in South Dakota and Minnesota. In December 1998, the Board issued a decision addressing the transportation-related aspects of DM&E's proposal (1998 Decision) (copy attached at Appendix B). In it, the Board found that the new line, if built, would provide transportation benefits by enabling DM&E to compete with the Union Pacific Railroad Company (UP) and the BNSF Railway Company (BNSF) in the PRB.

Then, to comply with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. (NEPA) and other relevant environmental laws and regulations, SEA prepared a thorough and comprehensive Environmental Impact Statement (EIS)—which is available in its entirety on the

Board's website at [www.std.dot.gov](http://www.std.dot.gov) and which SEA incorporates here by reference—as part of an environmental review process that took nearly four years to complete. The EIS was prepared in conjunction with the five federal cooperating agencies, and in consultation with a number of other agencies, including the U.S. Environmental Protection Agency (EPA). SEA does not intend to revisit or reconsider the comprehensive environmental analyses and conclusions in the EIS. The purpose of this focused Draft SEIS is to supplement the EIS with additional environmental analysis on the four remanded issues, consistent with the decision of the court in Mid States.

As discussed in more detail in the EIS, throughout the environmental review process, SEA sought input from agencies, elected officials, organizations, businesses, communities, farmers, ranchers, and other members of the public. SEA also undertook extensive public outreach activities to give interested parties, agencies, Tribes, and the general public the opportunity to learn about the project, define issues, and actively participate in the environmental review process. An approximately 5,000-page Draft EIS was issued for public review and comment in September 2000. An approximately 2,500-page Final EIS, issued in November 2001, contained further analysis in response to the roughly 8,600 written comments received. In addition to accepting written comments on the Draft EIS, SEA hosted 12 public meetings that were attended by more than 1,700 persons.

In January 2002, the Board issued a decision (2002 Decision) (copy attached at Appendix C) approving the line (Figure 1-1). Based on the environmental information amassed in the EIS, the Board concluded that DM&E's proposal would result in some potentially significant adverse environmental impacts, but that, with SEA's recommended environmental conditions, the impacts would not be severe enough to warrant disapproving the proposed new line in view of the line's significant transportation and public benefits: (1) the introduction of a competitive route from the PRB that would be as much as 390 miles shorter than the other carriers' routes to

the areas served by DM&E and (2) the attendant upgrade of DM&E's existing system, enabling improved service to DM&E's existing customers. Accordingly, the Board granted its approval for the line, subject to extensive environmental conditions (147 conditions in all) addressing both short-term (construction-related) impacts, and impacts related to long-term operation of unit coal trains.

### **Format of the Draft Supplemental Environmental Impact Statement**

Chapter 1 of the Draft SEIS summarizes the history of the DM&E proceeding before the Board, including the environmental review process. It also discusses the Board's 1998 and 2002 decisions and the subsequent litigation before the court. Further, Chapter 1 presents an overview of SEA's additional analysis of the four remanded issues, which were conducted in a manner consistent with the decision of the court in Mid States. Finally, Chapter 1 sets forth SEA's conclusions on the four issues and provides information on how the public may submit comments to the Draft SEIS.

Chapter 2 of the Draft SEIS discusses the remanded horn noise issue. It provides a summary of SEA's previous horn noise evaluation as well as a summary of the horn noise issue remanded by the court. This discussion includes a summary of the noise mitigation imposed by the Board as part of its 2002 Decision on the project. Finally, Chapter 2 explains the differing treatment of wayside and horn noise relative to mitigation, discusses the Federal Railroad Administration's adoption of a recent rule concerning horn soundings, and then considers whether mitigation for horn noise not involving limitations on the use of horns is warranted in this case.

Chapter 3 of the Draft SEIS addresses the remanded issue of the combined impact, or synergies, between vibration and noise. Chapter 3 summarizes the results presented in the EIS

on noise and vibration for the entire line, including the number of receptors exposed to adverse levels of vibration and noise. Chapter 3 concludes by presenting SEA's additional analysis of the potential impacts of the proposed project as a result of the synergistic effects of noise and vibration.

Chapter 4 examines the potential indirect air quality impacts of increased coal consumption that might result from lower transportation rates as a result of this project. Chapter 4 discusses existing computer simulation models that could be used for this analysis and explains SEA's model selection (the Department of Energy, Energy Information Administration's "NEMS" model). Chapter 4 further explains the development of inputs for the model to address the specific remanded issue related to the potential increased use of PRB coal. Last, Chapter 4 presents and discusses the results of the modeling that has been conducted and SEA's further analysis, and addresses where additional air quality mitigation, is warranted.

Chapter 5 explains that the Board has met its obligations under the National Historic Preservation Act in this matter because, although a Programmatic Agreement governing the historic preservation process was not executed at the time of the issuance of the 2002 Decision, one is now in place.

### **Preliminary Conclusions in the Draft SEIS**

For the reasons presented in the Draft SEIS, based on the information collected and the analysis conducted to date, SEA makes the following preliminary conclusions, and specifically seeks public review and comment on these conclusions, as well as all aspects of the Draft SEIS:

- **Horn Noise.** The number of potential receptors, requiring DM&E to mitigate the thousands of sensitive noise receptors potentially affected by horn noise by means such as insulation or sound barriers, would be very costly. Sound barriers would also create potential safety hazards and might not be effective. Following its additional analysis in this Draft SEIS and consistent with past cases, SEA continues to believe that additional mitigation for horn noise soundings, including mitigation, such as insulation treatments, at the noise receptor locations, or sound walls, is not reasonable or warranted. Therefore, SEA does not recommend any additional noise mitigation to address adverse impacts from train horn soundings beyond those already recommended and imposed.
- **Noise and Vibration Synergies.** SEA concluded in the Final EIS that the proposed project would have potentially significant impacts to noise sensitive receptors due to increases in noise from greater numbers of passing trains and locomotive horn soundings. Additionally, SEA concluded that the proposed project would not have significant effects on noise sensitive receptors due to increased vibration as projected vibration levels would be insufficient to cause damage to nearby structures. Following its additional investigation and analysis, in accordance with the court's remand, SEA finds no evidence to conclude that, at the levels of vibration anticipated from the proposed project, any increase in the annoyance from or perception of noise would occur. As such, SEA finds no reason to modify its prior noise and vibration conclusions, or include mitigation measures beyond those previously recommended and imposed to address these issues.

- **Air Quality.**

- After carefully assessing existing computer models, SEA selected the Department of Energy, Energy Information Administration's "NEMS" model (National Energy Modeling System) as the model that would most appropriately assess whether the DM&E's PRB Expansion Project would increase the long-term demand for coal and any subsequent effects on air quality.
- SEA then provided the Energy Information Administration with four transportation rate adjustments to use to simulate how the forecasted demand for Powder River Basin coal would be affected by changes in the rail transportation rates as a result of this project, and what effects, if any, there would be on air emissions.
- NEMS predicted that little additional coal would be produced nationally and regionally if the DM&E PRB Expansion Project were built.
- NEMS projected the air emissions for sulfur dioxide, nitrogen oxides, carbon dioxide, and mercury associated with the small increase of additional coal, and disclosed that, nationally, the increases would be less than 1 percent. Generally, the increases regionally would be minor.
- SEA, using NEMS data, projected the air emissions for carbon monoxide and particulate matter and disclosed that these increases, both nationally and regionally, would be small—less than 1 percent.

- SEA cannot rule out that, at certain locations, there could be more coal consumed as a result of this project, and therefore, increased air emissions. But because the information that SEA would need to meaningfully measure air emissions on a local basis is unknowable, any attempt to predict and evaluate potential increased air emissions on a local level would be little more than speculation. Therefore, SEA followed the procedures set out by the Council on Environmental Quality at 40 CFR 1502.22(b).
  - To the extent that there would be increased air emissions locally as a result of this project, applicable federal, state, and local environmental regulations, including EPA's Clean Air Interstate Rule and new mercury rule would act to constrain these air emissions.
  - Because of the small increases in coal production, coal consumption, and air emissions on a national and regional basis, and the lack of information needed to quantify impacts on a local basis, SEA did not recommend additional air quality mitigation beyond that previously imposed by the Board.
- **Programmatic Agreement.** SEA has developed and executed a Programmatic Agreement for the proposed project, thus satisfying the concerns of the court.

### **Public Comment and Review of the Draft Supplemental Environmental Impact Statement**

The Environmental Protection Agency will publish a notice in the Federal Register announcing the availability of the Draft SEIS. This notice starts the clock running on the public comment period. The notice should appear on April 22, 2005. The public has 45 days to provide

comments in the Draft SEIS. All comments must be mailed and postmarked no later than June 6, 2005.

SEA encourages the public and all interested parties to submit written comments by mail only on this Draft SEIS. Please be mindful that, in light of the decision of the 8<sup>th</sup> Circuit Court of Appeals, SEA is addressing only those issues remanded by the court to the Board for further environmental review. Consequently, *only comments on the issues addressed in the Draft SEIS can be considered*. The record is closed on all other issues addressed by the court or unchallenged.

Please mail written comments on the Draft SEIS to the address below. For comments exceeding five pages in length, please mail a signed original plus 10 copies. For comments five pages or less, a signed original is sufficient. Comments must be mailed by June 6, 2005 to:

Case Control Unit  
Finance Docket No. 33407  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Please write the following in the lower left hand corner of the envelope:

Attention: Victoria Rutson, Chief  
Section of Environmental Analysis  
Environmental Filing



Following the close of the comment period, SEA will prepare a Final Supplemental Environmental Impact Statement (Final SEIS) responding to comments and setting forth SEA's final conclusions on the four remanded issues. The Final SEIS will also present SEA's final recommendations to the Board. The Board will then make its final decision regarding this project and any additional environmental mitigation conditions it may impose.

After the conclusion of the environmental review, the Board (and each of the cooperating agencies) will decide whether, after considering the complete record in this proceeding, to approve, deny, or approve with conditions DM&E's PRB Expansion Project. Until the Board and cooperating agencies complete their consideration of the remanded issues and issue a final decision, DM&E does not have the requisite authority to construct and operate its proposed new line.